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undisclosed principal may sue and be sued does not apply to contracts under seal. *Gill v. Atlanta, B. & A. Ry.* (1920) 24 Ga. App. 780, 102 S. E. 457; *Briggs v. Partridge* (1876) 64 N. Y. 357. And this rule is rather illogically observed in many states although the private seal has been abolished by statute. *Donner v. Whitecotton* (1919) 201 Mo. App. 443, 212 S. W. 378. It is generally held in the construction of such statutes that the mere formality of the seal is abolished and that the law in regard to contracts under seal is unaffected. *Donner v. Whitecotton, supra*; *contra, Efta v. Swanson* (1911) 115 Minn. 373, 132 N. W. 335; see also (1919) 29 YALE LAW JOURNAL, 229. Thus, merely because the word "seal" or the letters "L. S." appear opposite the signatures of the parties to an instrument, the principal may either escape the responsibilities of the contract or be denied the advantages of it. Such a distinction is without foundation in view of the fact that the seal has lost its ancient formality and has become what is too often an unobserved part of printed forms of agreements. In point of justice the principal and the party with whom the agent has contracted should be given relief as much upon contracts in this form as upon simple contracts. See Ames, *Undisclosed Principal—His Rights and Liabilities* (1909) 18 YALE LAW JOURNAL, 443. The decision in the principal case is progressive, if not revolutionary, since it boldly casts aside the common-law rule without the aid of statute, the private seal never having been abolished in New York. N. Y. Cons. Laws, 1909, ch. 27, sec. 44. And it is still regarded as presumptive evidence of consideration upon an executory contract. N. Y. C. C. P. ch. 9, sec. 840. The court has deliberately overthrown an ancient rule when every reason for it is gone and every reason against it is present. See, Crane, *The Magic of the Private Seal* (1915) 15 COL. L. REV. 24.

BILLS AND NOTES—DRAWEE BANK'S PRIVILEGE TO CHARGE BACK CHECKS DRAWN BY ONE DEPOSITOR IN FAVOR OF ANOTHER.—The plaintiff depositor mailed to the defendant bank a check in favor of himself drawn by another depositor, requesting that it be credited to his account. The bank notified the plaintiff that it had done so. It being discovered on the same day that the drawer's account was insufficient the amount of the check was never debited against it. Two days later the defendant wired the plaintiff that the check was worthless and thereupon recharged the amount to the plaintiff's account. The plaintiff afterwards received the bank's letter of acknowledgment and drew a check for the amount of the credited sum. Payment being refused, he brought suit. *Held*, that the plaintiff could recover. *Cohen v. First Nat. Bank of Nogales* (1921, Ariz.) 198 Pac. 122.

The underlying principle upon which the instant case seems to rest is an exception to the general rule that money paid under a mistake of fact may be recovered. *Bank v. Schwarzschild* (1909) 109 Va. 539, 64 S. E. 954; *Liberty Trust Co. v. Haggerty* (1921, N. J. Eq.) 113 Atl. 596. That the drawer's signature was forged, for instance, is no ground for recovery by a drawee bank that has paid a check to a holder in good faith for value and without fault. *Bank of Portland v. U. S. Bank* (1921, Or.) 197 Pac. 547; (1921) 30 YALE LAW JOURNAL, 296. Nor is the drawer's insolvency a ground for recovery. *American Bank v. Miller* (1911, C. A. A. 6th) 185 Fed. 338; *Nat. Exch. Bank v. Ginn Co.* (1916) 114 Md. 181, 78 Atl. 1026. But to bring the instant case within this principle it must be assumed, as the court did, that the credit given the plaintiff was equivalent to an actual payment of the money and a redeposit. *Cohen v. Nat. Bank, supra* at p. 124. But whether or not paper so deposited is for payment or collection is to be finally determined by the expressed or implied intention of the parties. *Williams v. Cox* (1896) 97 Tenn. 555, 37 S. W. 282; *Fayette Bank v. Summers* (1906) 105 Va. 689, 54 S. E. 862; 7 L. R. A. (N. S.) 694, note. When the indorsement of a check is in blank and credit is given and the crediting bank

is not drawee, the general presumption is that the deposit was for payment and title to the paper passes to the bank. *Magee Banks and Banking* (2d ed. 1913) secs. 266, 267; *Walker and Brock v. Ranlett* (1915) 89 Vt. 71, 93 Atl. 1054. *A fortiori* such a presumption seems justified where the check is deposited with the drawee bank. But see *Nat. Gold Bank v. McDonald* (1875) 51 Calif. 64. The instant case seems to prefer the technical rule of law to the equitable principle of estoppel, which might have been applied had the court been so inclined, for the plaintiff showed no loss through the bank's conduct and did nothing in reliance upon the extension of credit. See *Walnut Hill Bank v. Nat. Reserve Bank* (1913) 141 App. Div. 475, 139 N. Y. Supp. 117.

CRIMINAL LAW—NECESSITY OF MENS REA IN STATUTORY OFFENCES.—The defendant killed a domestic pigeon under an honest belief that it was a wild dove. The Larceny Act, (1861) 24 & 25 Vict. c. 96, sec. 23, provided that, "Whosoever shall unlawfully and wilfully kill any House Pigeon or Dove under such circumstances as shall not amount to Larceny at Common Law" shall be liable to a penalty. Held, that an honest mistake of fact was no defence to a charge under that section. *Horton v. Gwynne* [1921] 2 K. B. 661.

It is elementary that *mens rea* is essential to common-law offences. 1 Bishop, *New Criminal Law* (8th ed. 1892) sec. 301. But the legislature may make certain acts criminal irrespective of guilty knowledge. *Commonwealth v. Weiss* (1891) 139 Pa. 247, 21 Atl. 10. In the absence of specific language, the necessity of *mens rea* is a problem of construction, in the solution of which the purpose and design of the statute must be kept in view. *Troutner v. State* (1916) 17 Ariz. 506, 154 Pac. 1048. Guilty knowledge is essential to crimes *malum in se*. 1 Bishop, *op. cit.* sec. 303, note 2. But intent is usually immaterial in offenses *malum prohibitum*. *Mens rea* was immaterial in a conviction for selling liquor to a minor in violation of a statute. *State v. Brown* (1914) 73 Or. 325, 144 Pac. 444. And for furnishing oleomargarine without notifying patrons. *State v. Welch* (1911) 145 Wis. 86, 129 N. W. 656. Ignorance of fact was no defence to a charge of selling an intoxicant as a "soft drink." *Commonwealth v. Weiss* (1891) 139 Pa. 247, 21 Atl. 10. The instant case seems to have carried the *malum prohibitum* doctrine to the extreme. The preamble to the Larceny Act begins, "... to consolidate and amend the statute law relating to Larceny and other similar offenses." The section in question is preceded by sections dealing with the stealing of horses, cows, sheep, and other animals. "Wilfully" in a criminal statute generally means with a bad purpose. *State v. Clifton* (1910) 152 N. C. 800, 67 S. E. 751. "Unlawfully" is sufficient to charge a wrongful intent. *Ex parte Ahart* (1916) 172 Calif. 762, 765, 159 Pac. 160, 162; *Newby v. State* (1905) 75 Neb. 33, 36, 105 N. W. 1099, 1100. It is believed, therefore, that *mens rea* should have been an essential element for conviction in the instant case. Such a result was reached in an indictment under the same section. *Taylor v. Newman* (1863, Q. B.) 4 B. & S. 89. The court, however, tried to distinguish that case.

EMPLOYERS' LIABILITY ACT—LACK OF KNOWLEDGE OF DESTINATION IMMATERIAL IN DETERMINING INTERSTATE STATUS OF SHIPMENT.—The plaintiff's intestate, a conductor of a switching crew, employed by the defendant on its terminal track at Buffalo, was killed by reason of the derailment of his engine while transferring three carloads of beef from a local storage house to the New York Central tracks in East Buffalo. The beef was in fact destined for Montreal and thence to England, but the waybill merely called for switching between lines, and the defendant had not been notified in advance of the foreign character of the shipment. The lower court ruled that the plaintiff's intestate was engaged in foreign commerce when killed. Held, (three judges dissenting) that the plaintiff could